

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

***Gary Green,***

**Petitioner,**

**v.**

***Lorie Davis, Director, Texas Department of  
Criminal Justice, Correctional Institutions  
Division,***

**Respondent**

**No. 3-15-CV-02197-M**

**Death Penalty Case**

**GREEN'S OPPOSED MOTION FOR LEAVE OF COURT TO FILE  
GREEN'S SUPPLEMENTAL BRIEF (BASED ON NEW EVIDENCE)  
IN SUPPORT OF  
GREEN'S POSTPETITION MOTION FOR FUNDING (ECF 42) AND  
GREEN'S PETITION UNDER 28 U.S.C. § 2254 (ECF 17)**

To the Honorable United States District Judge Lynn and Honorable United States Magistrate Judge Irma Carrillo Ramirez:

Petitioner Gary Green files this opposed motion for leave of court to file the supplemental brief (based on new evidence) in support of Green's postpetition motion for funding (ECF 42) and Green's petition under 28 U.S.C. § 2254 (ECF 17):

**I. Motion**

1. On June 17, 2017, Petitioner filed the postpetition funding motion (ECF 42).
2. On July 7, 2017, the government filed its response opposing the funding motion (ECF 44).
3. On July 28, 2017, Green filed the reply to the government's response opposing the funding motion (ECF 47).
4. The postpetition funding motion (ECF 42) is pending.

5. On June 13, 2016, Green filed the petition under 28 U.S.C. § 2254 (ECF 17) and the Appendix (ECF 17-1 to 17-17).

6. On March 13, 2017, the government filed the response to the petition under 28 U.S.C. § 2254 (ECF 36).

7. On June 19, 2017, Green filed the reply to the government's response to the petition under 28 U.S.C. § 2254 (ECF 43).

8. The petition under 28 U.S.C. § 2254 (ECF 17) is pending.

9. In support of the postpetition motion for funding (ECF 42), Green attached an affidavit from Mr. Robert Romig, who was Green's counsel during the State habeas proceedings. (ECF 42-9, App.827-828).

10. Last week, undersigned counsel Mowla learned from another attorney that while OCFW was being run by Mr. Levenson, it was Mr. Levenson's *policy* to **not** request funding for experts from state habeas courts if OCFW lacked funding for a case. Undersigned counsel had never heard of any such *policy* of OCFW while Mr. Levenson ran it.

11. This discovery by undersigned counsel necessitates requesting leave of court to file the supplemental brief (based on new evidence) in support of Green's postpetition motion for funding (ECF 42) and Green's petition under 28 U.S.C. § 2254 (ECF 17).

12. The issue discovered implicates the holding in [\*Hinton v. Alabama\*, 134 S.Ct. 1081 \(2014\)](#), which held that trial counsel's failure to request additional funding to replace expert witness, allegedly known by counsel to be inadequate, because trial counsel mistakenly believed he had exhausted expert-witness funding available under state statute, was held to constitute deficient performance. *Hinton* requires that counsel at least attempt to obtain funding from the court for necessary experts.

13. The supplemental brief and evidence will be filed immediately after this motion for leave is filed.

14. Because the arguments will be substantially similar, for purposes of clarity and brevity, Green will file the supplemental brief in support of both the postpetition motion for funding (ECF 42) and Green's petition under 28 U.S.C. § 2254 (ECF 17).

## **II. Prayer**

Green prays that the court grant this opposed motion for leave of court to file the supplemental brief (based on new evidence) in support of Green's postpetition motion for funding (ECF 42) and Green's petition under 28 U.S.C. § 2254 (ECF 17), and consider the arguments in the supplemental brief and the evidence attached in its appendix while this Court considers the postpetition motion for funding (ECF 42) and Green's petition under 28 U.S.C. § 2254 (ECF 17).

Respectfully submitted,

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**III. Certificate of Conference**

I certify that I conferred with Ellen Stewart-Klein of the Texas Attorney General's Office, who indicated that the Government is opposed to the relief requested this pleading.

/s/ Michael Mowla  
**Michael Mowla**

**IV. Certificate of Service**

This certifies that on November 14, 2017, this document was served through the ECF system on the Texas Attorney General's Office.

/s/ Michael Mowla  
**Michael Mowla**